

Rec'd PCT/PTO 01 JUL 2005

PATENT COOPERATION TREATY

PCT

10/541292

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference FER14669.001	FOR FURTHER ACTION		See item 4 below
International application No. PCT/US2004/003575	International filing date (day/month/year) 30 January 2004 (30.01.2004)	Priority date (day/month/year) 07 February 2003 (07.02.2003)	
International Patent Classification (IPC) or national classification and IPC 7 A61L 2/16, 2/23, B29B 9/00, 9/16, C08J 3/12, A61K 9/14			
Applicant FERRO CORPORATION			

1.	This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).		
2.	This REPORT consists of a total of 4 sheets, including this cover sheet.		
In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.			
3.	This report contains indications relating to the following items:		
	<input checked="" type="checkbox"/> Box No. I	Basis of the report	
	<input type="checkbox"/> Box No. II	Priority	
	<input type="checkbox"/> Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	
	<input type="checkbox"/> Box No. IV	Lack of unity of invention	
	<input checked="" type="checkbox"/> Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	
	<input type="checkbox"/> Box No. VI	Certain documents cited	
	<input type="checkbox"/> Box No. VII	Certain defects in the international application	
	<input type="checkbox"/> Box No. VIII	Certain observations on the international application	
4.	The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).		

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland		Date of issuance of this report 12 August 2005 (12.08.2005)
Facsimile No. +41 22 740 14 35		Authorized officer Ellen Moyse
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PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

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WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:
KENNETH A. CLARK
RANKIN HILL PORTER & CLARK LLP
925 CUCLID AVENUE, SUITE 700
CLEVELAND, OH 44115-1405

Date of mailing
(day/month/year)

13 SEP 2004

Applicant's or agent's file reference

FER14669.001

FOR FURTHER ACTION

See paragraph 2 below

International application No.

PCT/US04/03575

International filing date (day/month/year)

30 January 2004 (30.01.2004)

Priority date (day/month/year)

07 February 2003 (07.02.2003)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): A61L 2/16, 2/23; B29B 9/00, 9/16; C08J 3/12; A61K 9/14 and US Cl.: 424/489, 497, 498, 501, 502; 264/5, 9, 10, 11, 12; 422/188, 224, 242, 292

Applicant

FERRO CORPORATION

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International Application No. **Rec'd PCT/PTO 01 JUL 2005**
PCT/US04/03575

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US04/03575

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Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>1-20</u>	YES
	Claims <u>NONE</u>	NO
Inventive step (IS)	Claims <u>1-20</u>	YES
	Claims <u>NONE</u>	NO
Industrial applicability (IA)	Claims <u>1-20</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 1-20 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the method and apparatus set forth in the claims. The closest prior art is Sievers et al. (U.S. Patent No. 5,639,441). Sievers teaches the formation of fine particles through a method where the solid materials are dissolved in a polar liquid and then contacted with a supercritical fluid. This is contrary to applicant's method where the solid material is first contacted with a supercritical fluid and then contacted with a polar liquid. Regarding the apparatus, Sievers fails to teach the presence of a means disposed within the vessel for forming an emulsion. Sievers teaches that emulsions are formed through contact of the supercritical fluid and polar liquid.

Claims 1-20 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.